

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Tronic Products, Inc. :
and Catania Bros. Foods, Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Corporation Franchise Tax :
under Article 9A of the Tax Law :
for the Year 4/30/74. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of December, 1979, he served the within notices of Decision by certified mail upon Tronic Products, Inc., and Catania Bros. Foods, Inc., the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Tronic Products, Inc. 744 Broadway Newburgh, NY 12550	Catania Bros. Foods, Inc. 145 South Plank Road Newburgh, New York 12550
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and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
19th day of December, 1979.

Joanne Krapp

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Tronic Products, Inc. :
and Catania Bros. Foods, Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Corporation Franchise Tax :
under Article 9A of the Tax Law :
for the Year 4/30/74. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of December, 1979, he served the within notice of Decision by certified mail upon Morton G. Millstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Morton G. Millstein
13 Goshen Ave.
Washingtonville, NY 10992

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
19th day of December, 1979.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

December 19, 1979

Tronic Products, Inc.
and Catania Bros. Foods, Inc.
744 Broadway
Newburgh, NY 12550

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Morton G. Millstein
13 Goshen Ave.
Washingtonville, NY 10992
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
TRONIC PRODUCTS, INC.	:	
and	:	DECISION
CATANIA BROS. FOODS, INC.	:	
for Redetermination of Deficiencies or	:	
for Refunds of Franchise Tax on Business	:	
Corporations under Article 9-A of the Tax	:	
Law for the Periods Ended April 30, 1974.	:	

Petitioners, Tronic Products, Inc., 744 Broadway, Newburgh, New York 12550, and Catania Bros. Foods, Inc., 145 South Plank Road, Newburgh, New York 12550, filed petitions for redetermination of deficiencies or for refunds of franchise tax on business corporations under Article 9-A of the Tax Law for the periods ended April 30, 1974 (File No. 11690).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 30, 1977 at 10:45 A.M. Petitioner appeared by Morton G. Millstein, CPA. The Corporation Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether petitioners, a foreign corporation doing business in New York and its wholly-owned domestic subsidiary, may file combined corporation franchise tax reports.

FINDINGS OF FACT

1. Petitioner Tronic Products, Inc. ("Tronic") and its wholly-owned subsidiary, petitioner Catania Bros. Foods, Inc. ("Catania") requested permission

to file corporation franchise tax reports on a combined basis for the fiscal year ended May 1, 1973 through April 30, 1974, with respect to Tronic and the period January 1, 1974 through April 30, 1974 with respect to Catania. Permission was denied by the Corporation Tax Bureau. Nevertheless, petitioners filed said reports on a combined basis.

2. On June 16, 1975, the Corporation Tax Bureau issued a Statement of Audit Adjustment and Notice of Deficiency against Catania in the amount of \$3,762.98 in tax, plus interest, for the period ended April 30, 1974.

On June 16, 1975, the Corporation Tax Bureau also issued a Statement of Audit Adjustment and Notice of Deficiency against Tronic Products, Inc. in the amount of \$56.93, plus interest, for the period ended April 30, 1974.

The deficiencies were based on the disallowance of petitioners' filing of combined reports. The tax for each corporation was recalculated by the Bureau on an individual basis.

3. During the period herein involved, petitioner Tronic (a Delaware Corporation qualified to do business in New York), was a publicly-traded holding company. It had no assets other than the stock of its wholly-owned subsidiary, Catania.

4. Petitioner Tronic acquired petitioner Catania (a New York corporation) in December of 1973. Mr. Bryant Fischler acted as the chief executive officer of both corporations throughout 1974. Catania had assets worth approximately one million dollars in 1974.

5. Petitioner Catania processed meats for sale to major food chains. Catania billed the food chains directly for its products and received the total proceeds of its sales. Catania did not sell or buy any product or service from Tronic.

6. Petitioner Catania paid dividends to Tronic of \$15,000.00 a month.

These dividends were used by Tronic to pay off obligations incurred by Catania in the purchase of equipment in Catania's own name. They were also used to pay debts incurred by Tronic in the financing of its original purchase of Catania. These dividends were Tronic's only source of revenue in 1974.

7. During the period herein involved, petitioner Catania had approximately sixty employees. Tronic had only one, Bryant Fischler. Catania's five bookkeepers performed all of Tronic's accounting.

8. During the period herein involved, petitioners were required to cross-guarantee each other's loans in order to obtain adequate financing.

9. In 1974 petitioner Tronic liquidated its only other subsidiary, Controlled Tropical Fish Pattern, Inc., a non-functioning, non-related tropical fish business.

10. Findings of Fact "4" through "7" show that the only identifiable intercorporate transactions between petitioners, Tronic and Catania, during 1974 were exclusively attributable to the sharing of accounting and managerial services, the cross-guarantee of loans, and the payment by Tronic (with dividends received from Catania) of equipment obligations incurred by Catania.

CONCLUSIONS OF LAW

A. That Section 211.4 of the Tax Law authorizes the Tax Commission, in its discretion, to require or permit certain parent corporations (either domestic corporations or foreign corporations doing business in New York, e.g. Tronic Products, Inc.) and certain wholly-owned subsidiaries (either domestic corporations, e.g. Catania Bros. Foods, Inc., or foreign corporations doing business in New York) to make a corporation franchise tax report on a combined basis. No combined report covering a foreign corporation not doing business in New York may be required, however, unless the Tax Commission deems it necessary (because of intercompany transactions or some agreement, understanding,

arrangement or transaction which distorts income or capital) in order to properly reflect tax liabilities.

B. That during the periods at issue, the State Tax Commission provided (by regulation) that in determining whether the tax would be computed on a combined basis, it would consider various factors, including the following:

- (1) Whether the corporations were engaged in the same or related lines of business;
- (2) Whether any of the corporations were in substance merely departments of a unitary business conducted by the entire group;
- (3) Whether the products of any of the corporations were sold to or used by any of the other corporations;
- (4) Whether any of the corporations performed services for, or loaned money to, or otherwise financed or assisted in the operations of any of the other corporations;
- (5) Whether there were other substantial intercompany transactions among the constituent corporations.

(former 20 NYCRR 5.28(b))

The essential elements of these factors have been carried over into the current regulations which were effective for taxable years beginning on or after January 1, 1976 and which provide, in pertinent part:

In deciding whether to permit or require combined reports, the following two (2) broad factors must be met:

- (1) The corporations are in substance parts of a unitary business conducted by the entire group of corporations, and
- (2) There are substantial intercorporate transactions among the corporations.

(20 NYCRR 6-2.3(a) (Emphasis supplied))

The mandatory language of the current regulations takes cognizance of those elements which the Tax Commission has consistently deemed to be the key factors in determining whether combination should be permitted or required, i.e., the unitary nature of the business conducted by the corporations, and

whether there were substantial intercorporate transactions among the corporations. (See: Petition of Annel Holding Corp., et al., State Tax Commission, August 2, 1973, Determination confirmed, Annel Holding Corp., v. Procaccino, 77 Misc. 2d 886 (Sup. Ct. Albany County, 1974); Petition of N. K. Winston Corporation, et al., State Tax Commission, August 21, 1974.)

Petitioners herein have not only failed to show that they were each, in substance, part of a unitary business, but have also failed to show that there were substantial intercorporate transactions between them. Accordingly, permission to file on a combined basis is denied. (See: Petitions of Montauk Improvement, Inc., et al., State Tax Commission, September 28, 1979; Petitions of Alpha Computer Service Corporation, et al., State Tax Commission, September 28, 1979.)

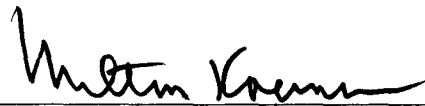
C. That the notices of deficiency issued against Tronic Products, Inc. and Catania Bros. Foods, Inc. on June 16, 1975 are sustained and the petitions are denied.

DATED: Albany, New York

DEC 19 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER